REMARKS/ARGUMENTS

This Reply is being filed in response to the first Official Action on a Request for Continued Examination (RCE) for the present application. The first Official Action of this RCE rejects all of the pending claims, namely Claims 1-24, under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Application Publication No. 2005/0086318 to Aubault, in view of U.S. Patent No. 6,157,982 to Deo, and further in view of U.S. Patent Application Publication No. 2004/0213207 to Silver et al. In addition, the first Official Action provisionally rejects all of the pending claims under the doctrine of obviousness-type double patenting in view of co-pending U.S. Patent Application No. 10/690,656, filed on the same date as the present application. As explained below, however, Applicants respectfully submit that Aubault is not prior art to the claimed invention, and that the Official Action fails to support its obviousness-type double patenting rejection of the claims. Accordingly, Applicants respectfully traverse all of the rejections of the pending claims. In view of the remarks presented herein, Applicants respectfully request reconsideration and allowance of all of the pending claims of the present application.

A. Rejection of Claims 1-24 over Aubault, Deo and Silver

The Official Action rejects all of the pending claims as being unpatentable over Aubault, in view of Deo, and further in view of Silver. Applicants respectfully submit, however, that Aubault does not qualify as prior art to support a rejection of the claimed invention. In this regard, Aubault published on April 21, 2005, after the filing date of the present application (i.e., October 22, 2003); and therefore, Aubault does not qualify as prior art to the claimed invention under 35 U.S.C. §§ 102(a) or (b). Aubault does claim priority to a PCT patent application filed before the filing date of the present application (i.e., December 5, 2002). But as that PCT patent application was not published in the English language, Aubault also does not qualify as prior art to the claimed invention under 35 U.S.C. §§ 102(e). And as Aubault does not qualify as prior art under §§ 102(a), (b) or (e), and as none of the other subsections of § 102 apply, Applicants respectfully submit that Aubault cannot properly be cited in support of an anticipation rejection of the claimed invention under 35 U.S.C. § 102, and accordingly, in support of an obviousness

rejection of the claimed invention under 35 U.S.C. § 103.

As Aubault is disqualified as prior art to support a rejection of the claimed invention under 35 U.S.C. § 103, Applicants respectfully submit that the rejection of Claims 1-24 under 35 U.S.C. § 103(a) as being unpatentable over Aubault, in view of Deo, and further in view of Silver is overcome.

B. The Official Action Fails to Support a Provisional Double Patenting Rejection

The first Official Action provisionally rejects all of the pending claims for obviousness-type double patenting in view of the aforementioned '656 application. Applicants respectfully submit, however, that even if one could argue that the claimed invention of the present application and that of the '656 application are related, the Official Action has not presented any proper support for the assertion that respective inventions are not patentably distinct from one another. The Official Action indicates that the claimed invention of the present application merely broadens the scope of the claimed invention of the '656 application. More particularly, the Official Action alleges that the claims of the present application are broader in scope than those of the '656 application.

Initially, Applicants note that the Official Action alleges that it has been held that the omission of an element and its function is an obvious expedient if the remaining elements perform the same function as before. However, as the Official Action failed to provide support for this assertion, Applicants cannot reasonably evaluate if, and if so to what extent, such a holding applies to the instant case. Applicants do note that MPEP § 2144.04 II.A. does indicate that such an omission is obvious if the function of the element is not desired or otherwise required (*citing Ex parte Wu*, 10 USPQ 2031 (Bd. Pat. App. & Inter. 1989)). In the instant case, however, the Official Action has not alleged that any alleged omitted features are not desired or otherwise required.

As explicitly stated in the MPEP, the fact that one application dominates another application (i.e., when an application has a broad or generic claim that fully encompasses or reads on the claimed invention of another application) cannot itself support a double patenting rejection. MPEP § 804 II. Thus, to support an obviousness-type double patenting rejection, the

Official Action must establish that the claims of the present application are obvious variations of the invention defined by the claims of the '656 application. As the Official Action fails to establish such obviousness of the claimed invention, Applicants respectfully submit that the provisional double-patenting rejection of Claims 1-24 is overcome.

CONCLUSION

In view of the remarks presented above, Applicants respectfully submit that the present application is in condition for allowance. As such, the issuance of a Notice of Allowance is therefore respectfully requested. In order to expedite the examination of the present application, the Examiner is encouraged to contact Applicants' undersigned attorney in order to resolve any remaining issues.

It is not believed that extensions of time or fees for net addition of claims are required, beyond those that may otherwise be provided for in documents accompanying this paper. However, in the event that additional extensions of time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 CFR § 1.136(a), and any fee required therefore (including fees for net addition of claims) is hereby authorized to be charged to Deposit Account No. 16-0605.

Respectfully submitted,

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